

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Board)	CC Docket No. 96-45
On Universal Service)	

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

Alltel Communications, Inc. (“Alltel”), pursuant to Section 1.429(f) of the Commission’s rules, hereby opposes the Petition for Reconsideration submitted jointly by TDS Telecommunications, the Independent Telephone and Telecommunications Alliance and the Western Alliance in the above-captioned proceeding on June 24, 2005 (the “Petition”)¹. The Petition is devoid of any line of argumentation that has not previously been disposed of by the Commission (and on numerous occasions) in a manner that better comports with a holistic and more meaningful reading of the universal service provisions of the Communications Act of 1934, as amended (the “Act”). Petitioners ignore the lessons of *Alenco Communications, Inc. v. FCC* 258 F. 3d 1191 (5th Cir, 2000) and the plain language of Section 254 of the Act as they attempt to perpetuate a backward looking, wireline-centric view of the higher purposes of universal service.²

¹ The Petition seeks reconsideration of select aspects of the Commission’s decision in *Report and Order, In the Matter of Federal -State Joint Board on Universal Service*, CC Docket No. 96-46, FCC 05-46 (released March 17, 2005)(“ETC Designation Order”).

² Alltel Corporation, in addition to its wireless interests, also serves as the holding company for subsidiaries providing telephone exchange service as incumbent local exchange carriers

The Petitioners argue that universal support should be limited to those carriers capable of serving the fund's underlying objective and that the Commission must limit the size of the fund to ensure that contributions to the fund remain reasonable.³ The rapid growth of the fund is attributed by petitioners to the growing number of competitive eligible telecommunications carriers ("CETCs"), intimating, without support, that the designation of CETCs heightens the potential for fraud, waste and misuse of universal service support. The Petition's arguments should be rejected out of hand.

I. Neither the Statute Nor the Commission's Orders Require the Provision of Connectivity Throughout the Designated Area Prior to Receipt of Universal Service Support.

Petitioners appear to construe Section 214(e)(1) of the Act to require that any recipient of universal service support provide ubiquitous facilities-based connectivity throughout its designated service area prior to the time designation is made or support is received.⁴ Wireless carriers alone, as Petitioners would have it, would be required to achieve 100% network

("ILECs") in largely rural areas. While not totally unsympathetic to the concerns of rural ILECs, Alltel has advocated that universal service policy must comport with the larger goals of the Telecommunications Act of 1996, and in particular, enhanced consumer choice through competition as well as the provision of new and advanced services to rural America on a technology neutral basis. See 47 USC Sec. 254; *Comments of Alltel Corporation, In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed August 6, 2004); *Alenco Communications, Inc. v. FCC* 258 F.3d 1191 (5th Cir. 2000).

³ See *Petition* at page 2.

⁴ *Petition* at pages 3 and 4. Petitioners appear to equate the term "offer" in Section 214(e)(1) with the ability to instantaneously provide facilities-based connectivity to any customer located within the borders of their designated service area. Neither the Act nor the Commission's rules contain any such requirement. COLR requirements follow ILECs pursuant to state regulation even where the ILEC does not draw support, and wireless ETCs are as general matter, beyond state regulation of market entry and exit per the dictates of Section 332 (c) of the Act. ILECs only have to make reasonable attempts to provide service

coverage. The Commission has repeatedly acknowledged that facilities-based market entry by CETCs would not occur overnight, and that the public interest was best served through permitting CETCs to buildout their systems. CETCs were afforded the ability to provide service through a combination of facilities-based and resold services to provide coverage over their designated service area. Any other approach would have created an insurmountable barrier to market entry by competitors and served to leave the entrenched monopoly ILEC provider as the only recipient of support.

Ultimately, the Petitioners' arguments are academic at best, for ILECs themselves cannot meet these same stringent buildout requirements. The record in this proceeding noted the tariffs typically maintained by ILECs on the state level only provide for connectivity within a limited distance from end offices. Individual subscribers are essentially required to foot the bill for that portion of the loop that provides the connectivity, regardless of the cost, once they are outside the distance from the end office specified pursuant to state tariff.⁵ Further, CETCs are permitted to draw funding only to the extent that they actually serve the line. Buildout requirements as part of the designation process are not in any measure related to the actual draw on the fund by the CETC, which is based upon lines actually served. Consequently, it is the CETC that has the strongest incentive to use the support to further

and they generally maintain "extension line" tariffs that limit service to areas within a certain distance from their switching offices.

⁵ See, *Reply Comments of Alltel Corporation in the Matter of the Federal-State Joint Board on Universal Service* (filed Sept. 1, 2004) at pages 4-5.

buildout and to capture additional customers through the provision of a service. The CETC either serves the line, i.e. have built out, or it does not, in which case no support for the line is received.

If the concern to be addressed is one based on a need to serve the more sparsely populated areas within a rural ILEC study area, that issue is addressed by the recent revisions to the Commission's cream skimming analysis. To the extent that the CETCs licensed coverage area is not contiguous with the rural ILECs study area, the other issues concerning the targeting of support may be addressed through the disaggregation of support on a wire center by wire center basis through redefinition of ILEC study areas. As the Commission has acknowledged, redefinition better targets support to those wire centers that are truly high cost. But then, Petitioners object to redefinition as well, despite their hollow urgings for more accountability and integrity in dispersing the fund's support.

II. Per Line Benchmarks Neither Ensure the Stability of the Fund Nor Serve the Public Interest

The Commission correctly noted in the ETC Designation Order that the impact of any particular ETC designation on the overall fund would be insubstantial.⁶ Petitioners offer no new insight or reason as to why that decision should be revisited, other than to call into question the Commission's determination as to the lack of sufficiency of its record on per line

⁶ ETC Designation Order at para. 54

benchmarks.⁷ The Commission's approach provides for the fair distribution of the fund among competitors and competing technology platforms in accord with the goals set forth in Section 254 of the Act. Nothing either in the Act or the Commission's rules requires that benchmarks, particularly ILEC-centric benchmarks, bar entry by a CETC.

Per line benchmarks based upon ILECs' historic costs only serve arbitrarily to deny consumers in high cost areas the benefit of competitive choice among competing technologies and reward incumbent ILEC inefficiency. This result is contrary to both the tenets of the Act and the teachings of *Alenco* (FCC's purpose is to make available a rapid *efficient* nationwide and worldwide communication system.). The level of support received by the ILEC is only one of many factors to be considered in an ETC designation proceeding, and the basis for that level of support is currently under further consideration by the Federal-State Joint Board.⁸ Lastly, there remains significant doubt that any benchmark or cap that serves to bar entry by a more efficient non-ILEC ETC would be found not to violate the requirements for technology neutrality.

Petitioners would also seek to bar CETC entry where support is limited to those mechanisms designed to replace lost ILEC access charges.

⁷ *Petition* at pages 9-12.

⁸ Petitioners also argue that, in order to control the funds growth – a questionable assertion in the first instance – ETCs designations should be barred without regard to any resolution in the Basis of Support proceeding. If, as Petitioners assert, the size of the fund is their primary concern, and not the elimination of competition, they should favor at least some of the proposals under consideration in the Basis of Support proceeding that would lower the

Not only would this approach again result in a bar to market entry to a competitor offering an alternative technology capable of providing the supported services, it would also continue to permit the ILEC to distort the market for telecommunications services through charging artificially low rates to consumers, as opposed to rebalanced rates that, while higher, might otherwise be deemed still affordable for universal service purposes outside the context of lifeline and linkup programs. In the case of the CALLS plan, high cost support was expressly portable, although it was capped. And long as high cost support under ICLS remains uncapped and is based upon the embedded cost structure of the incumbent ILEC, the level of high cost support for all competitors should remain the same to preserve a level competitive playing field, particularly inasmuch as Petitioners continue to argue for the imposition of carrier of last resort (“COLR”) requirements on CETCs. Should a wireless CETC be left as the COLR, a possible outcome under the Commission’s ETC Designation Order⁹, it would be required to provide the same “equal access” that ILECs now provide. Any equal access requirements would bring with it the right to fair compensation for the access provided, and hence, entitlement on the part of the wireless ETC to support based upon the reduction or inability to obtain compensation for access provided as a COLR.

demands on the fund. Until that proceeding is decided, the status quo should be maintained for both ILECs and CETCs without limitation.

⁹ ETC Designation Order at paras. 35-37.

III. The Commission Correctly Applied the Standards for Pending Redefinition Petitions

Petitioners challenge the Commission's grant of unspecified petitions for redefinition¹⁰ of incumbent ILEC service areas that had been previously acted upon by the appropriate state commissions prior to issuance of the *Virginia Cellular*¹¹ and *Highland Cellular*¹² decisions. In those cases, the Commission established new standards for the cream skimming analysis and prohibited disaggregation of a study area below a wire center level. Petitioners essentially ask the FCC to deny the petitions or otherwise seek to have the states reevaluate the petitions in light of the subsequently released *Virginia Cellular* and *Highland Cellular* standards. Indeed, the Petitioners go so far as to characterize the Commission's action as conceding that the petitions did not satisfy the applicable standards.¹³

Given the procedural history of the Alltel redefinition petitions, particularly before the Commission, Petitioner's arguments are disingenuous at best. Section 214(e)(5) of the Act and Section 54.207(c)(3) of the Commission's rules does generally provide that a rural telephone company's service area will be its study area unless both the Commission and the state

¹⁰ *Petition* at page 16-17, generally citing to the ETC Designation Order at paras. 78-79, without referencing the applicability of their arguments to any particular petition. To the extent that Petitioners challenge the grant of either of the two Alltel petitions cited in the ETC Designation Order, Alltel proffers its response herein.

¹¹ *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563 (2004) ("Virginia Cellular")

¹² *Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, FCC 04-37, CC Docket No.96-45 (April 12, 2004) ("Highland Cellular")

agree to establish a different definition of the service area. Where the Commission does not initiate a proceeding within 90 days after the release of Public Notice of the filing of the petition for redefinition, any state action is deemed approved by the Commission and the state order takes effect under state law.¹⁴

As Petitioners are well aware,¹⁵ Alltel received approval of its Wisconsin and Michigan redefinition petitions by state authorities well before the issuance of the *Virginia Cellular* and *Highland Cellular* decisions. The Commission placed the petitions on Public Notice in December of 2003.¹⁶ The comment cycle for the Wisconsin petition closed January 5, 2004, and the comment cycle for the Michigan petition closed on January 29, 2004.

The FCC subsequently initiated proceedings to consider the two Alltel redefinition petitions.¹⁷ After the release of the *Virginia Cellular* and the *Highland Cellular* orders, the FCC then through *Public Notice*¹⁸ invited

¹³ *Petition* at page 16.

¹⁴ See, 47 C.F.R. Section 54.207(c) (3).

¹⁵ TDS Telecommunications Corp. and CenturyTel of Alabama, LLC (a corporate affiliate of one of ITTA's more prominent members) submitted oppositions and comments on the two Alltel redefinition petitions and were active parties in those proceedings.

¹⁶ See, *Wireline Competition Bureau Seeks Comment on Alltel's Petition to Redefine Rural Telephone Company Service Areas in the State of Wisconsin*, CC Docket No. 96-45, DA 03-3876 (released Dec. 4, 2003); *Wireline Competition Bureau Seeks Comment on Alltel's petition to Redefine Rural Telephone Company Service Areas in the State of Michigan*, CC Docket No. 96-45, DA 03-4112 (released Dec. 30, 2003).

¹⁷ See, *Wireline Competition Bureau Initiates Proceeding to Consider the Alltel Communications, Inc. Petition to Redefine Rural Telephone Company Service Areas in the State of Wisconsin*, CC Docket No. 96-45, DA 04-565 (released Feb. 2004); *Wireline Competition Bureau Initiates Proceeding to Consider the ALLTEL Communications, Inc. Petition to Redefine Rural Telephone Company Service Areas in the State of Michigan*, CC Docket No. 96-45, DA 04-686 (released March 12, 2004)

¹⁸ See, *Parties Are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations*, CC Docket No. 96-45, DA 04-999 (released April 12, 2004).

parties to supplement the record on the petitions listed in the appendix in light of the newly announced standards. An opportunity was provided for interested parties to comment on any supplements filed to the listed petitions. The two Alltel redefinition petitions were listed in the appendix to the *Public Notice*.¹⁹

Alltel filed supplements to both of its redefinition petitions to address the new *Virginia Cellular* and *Highland Cellular* standards for cream skimming analysis on May 14, 2004.²⁰ CenturyTel of Alabama, LLC filed comments with respect to Alltel's Michigan petition on May 28, 2004, and TDS Telecommunications Corp filed comments on the same date respecting both of Alltel's redefinition petitions.²¹ Alltel replied to the CenturyTel and TDS comments on June 9, 2004²² conclusively demonstrating that its requested redefinitions posed no cream skimming concerns even under the *Virginia Cellular* and *Highland Cellular* standards for analysis.

The portion of the Commission's ETC Designation Order referenced by Petitioners²³ notes only that the state commissions issued their determinations on the Alltel redefinition petitions prior to the issuance of the

¹⁹ Id.

²⁰ See, Letters of Cheryl A. Tritt, counsel, Alltel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (May 14, 2004);

²¹ See, *Comments of CenturyTel of Alabama, LLC, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (May 28, 2004); *Comments of TDS Telecommunications Corp., Federal – State Joint Board on Universal Service; Alltel Communications, Inc. Petition for Consent to Redefine Rural Telephone Company Service Areas in Michigan*, CC Docket No. 96-45 (May 28, 2004); *Comments of TDS Telecommunications Corp, Federal-State Board on Universal Service, Alltel Communications, Inc. Petition to Redefine Rural Telephone Company Service Areas in Wisconsin*, CC Docket No. 96-45 (May 28, 2004).

²² See, *Reply Comments of Alltel Communications, Inc.*, CC Docket No. 96-45, DA No.s 04-686, 04-565 and 04-999 (filed June 9, 2004).

Virginia Cellular and *Highland Cellular* decisions and consequently, could not have applied the new standards in their considerations. The Commission declined to upset the state determinations on that basis and granted Alltel's two redefinition petitions.²⁴

The purpose of Alltel's lengthy recitation of the procedural history is not to argue the substance of the cream skimming analysis inasmuch as Petitioner's arguments are exclusively procedural, and Alltel has, through its supplement and reply, conclusively demonstrated the absence of any cream skimming concerns associated with its two petitions.²⁵ Rather, Alltel notes that Petitioner's arguments beg the question as to whether any such cream skimming analysis promulgated by the Commission would have been binding on the states in the first instance inasmuch as the ETC Designation Order's standards were posited as permissive, and not mandatory guidelines for the states.²⁶ Alltel further notes that the Commission afforded all parties the opportunity to comment on the redefinition petitions to substantively address the standards in *Virginia Cellular* and *Highland Cellular*. It would serve no useful purpose for the Commission to force states to revisit their earlier decisions, when on the basis of the record before the Commission, the issues of concern have already been addressed by Alltel under the revised standards.

²³ See *Petition* at pages 16-18 citing the ETC Designation Order at paras. 78-79

²⁴ See ETC Designation Order at paras. 78-79.

²⁵ Alltel incorporates the record on its redefinition petitions herein by reference should the Commission choose to render a decision in response to the *Petition*.

The fact that a state commission may have approved a redefinition petition previously under a lesser standard is of no moment to the Commission or the Petitioners for that is an issue best left for the states to pursue, and they have chosen not to do so. Ultimately, the Petitioners seek reconsideration of the Commission's decision, and, on the basis of the record on Alltel's redefinition petitions, and in particular, its showings under the *Virginia Cellular* and *Highland Cellular* standards, the result would be precisely the same. Alltel's petitions do not pose any cream skimming concerns and the Commission need not revisit its decision to grant them.

In conclusion, the Petitioners' cumulative efforts to thwart competition and consumer choice should not be condoned by the Commission. The Petition should be denied in its entirety.

Respectfully submitted,

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²⁶ See ETC Designation Order at paras. 58-64.

Dated: August 3, 2005

CERTIFICATE OF SERVICE

I, Glenn S. Rabin, do hereby certify that I have on this 3rd day of August, 2005, had copies of the foregoing "Opposition to Petition for Reconsideration" sent to the following via First Class United States mail, postage prepaid:

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